

CHAPTER NO. 326

SENATE BILL NO. 1728

By Ketron

Substituted for: House Bill No. 1652

By DuBois, Gresham

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 120, Part 1, relative to building safety.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 120, Part 1, is amended by adding the following new section:

Section 68-120-1___. (a)(1) "Issuing officer," as used in this section, means either:

(A) Any official authorized by law to issue search warrants; or

(B) Any court of record in the county of residence of the agency making application for an administrative inspection warrant.

(2) "Building official," as used in this section, means any local government building official certified pursuant to §68-120-113, provided that such official is acting in their capacity as an official of a municipality or county, and provided that the official is seeking to enforce the ordinances or codes of such local government.

(3) "Agency," as used in this section, means any county, city, or town employing a building official certified pursuant to §68-120-113.

(b) In the event that a building official is denied permission to make an inspection and a warrant is required by the Constitution of the United States or the State of Tennessee to perform such inspection, a building official may obtain an administrative inspection warrant in accordance with the procedures outlined in this section. The provisions of Title 40, Chapter 6, Part 1, shall not apply to warrants issued pursuant to this section.

(c) The issuing officer is authorized to issue administrative inspection warrants authorizing a building official to inspect named premises. In so doing, the issuing officer must determine from the affidavits filed by the building official, acting as an officer of the agency requesting the warrant that:

(1) The agency has the statutory authority to conduct the inspection;

(2) Probable cause exists to believe that a violation of law has occurred or is occurring. For the purposes of this section, probable cause is not the same standard as used in obtaining criminal search warrants. In addition to a showing

of specific evidence of an existing violation, probable cause can be found upon a showing of facts justifying further inquiry, by inspection, to determine whether a violation of any state law or local building, fire, or life safety code is occurring. This finding can be based upon a showing that:

(A) Previous inspections have shown violations of law and the present inspection is necessary to determine whether those violations have been abated;

(B) Complaints have been received by the agency and presented to the issuing officer, from persons who by status or position have personal knowledge of violations of law occurring on the named premises;

(C) The inspection of the premises in question was to be made pursuant to an administrative plan containing neutral criteria supporting the need for the inspection; or

(D) Any other showing consistent with constitutional standards for probable cause in administrative inspections;

(3) The inspection is reasonable and not intended to arbitrarily harass the persons or business involved;

(4) The areas and items to be inspected are accurately described and are consistent with the statutory inspection authority; and

(5) The purpose of the inspection is not criminal in nature and the agency is not seeking sanctions against the person or business for refusing entry.

(d) The issuing officer shall immediately make a finding as to whether an administrative inspection warrant should be issued and if the issuing officer so determines, issue such warrant. No notice shall be required prior to the issuance of the warrant.

(e) All warrants shall include at least the following:

(1) The name of the agency and building official requesting the warrant;

(2) The statutory or regulatory authority for the inspection;

(3) The names of the building official(s) authorized to conduct the administrative inspection;

(4) A reasonable description of the property and items to be inspected;

(5) A brief description of the purposes of the inspection; and

(6) Any other requirements or particularity required by the constitutions of the United States and the State of Tennessee, regarding administrative inspections.

(f) All warrants shall be executed within ten (10) days of issuance.

(g) Any person who willfully refuses to permit inspection, obstructs inspection or aids in the obstruction of an inspection of property described in an administrative inspection warrant commits a Class C misdemeanor.

(h) Any person aggrieved by an unlawful inspection of premises named in an administrative inspection warrant may in any judicial or administrative proceeding move to suppress any evidence or information received by the agency pursuant to such inspection.

(i) If the court or the administrative agency finds that the inspection was unlawful, such evidence and information shall be suppressed and not considered in the proceeding.

SECTION 2. The provisions of this act shall only apply in jurisdictions that require enforcement of building ordinances or codes and make inspections of premises to implement and enforce such ordinances or codes.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 28, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of June 2003


PHIL BREDESEN, GOVERNOR